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Supreme Court of the United

OCTOBER TERM, 1963.

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No. 157

R. B. PARDE, OTTO DRISKELL, MRS. ELIZABETH
W. WIGGINS AND FRANK O. BURGE, JR., Suing
in Their Capacity as Administrators of the Estate of
JOHN ERVIN WIGGINS, Deceased, and AUBREY
E. PRICE,

Petitioners,

versus

TERMINAL RAILWAY OF THE ALABAMA STATE
DOCKS DEPARTMENT, ET AL.,

Respondents.

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF
CERTIORARI.

RICHMOND M. FLOWERS,

As Attorney General of the State
of Alabama,

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IN THE
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BRIEF IN OPPOSITION TO PETITION FOR WRIT OF
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A.

QUESTIONS PRESENTED FOR REVIEW.

May the State of Alabama be sued without its consent by a citizen of the State of Alabama in a District Court of the United States on a claim based upon the Federal Employers Liability Act for damages for personal injuries sustained by the citizen while employed by a railroad owned and operated by the State of Alabama as a common carrier engaged in interstate commerce?

B.

CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED.

The following constitutional provisions and statutes in addition to those specified in the Petition for a Writ of Certiorari are involved:

**CONSTITUTION OF THE UNITED STATES,
ARTICLE III, SECTION 2, CLAUSE 1.****JURISDICTION OF COURTS.**

The judicial power shall extend to all Cases, in Law and Equity, arising under this Constitution, the Laws of the United States, and Treaties made, or which shall be made, under their Authority;—to all Cases affecting Ambassadors, other public Ministers and Consuls;—to all Cases of admiralty and maritime Jurisdiction;—to Controversies to which the United States shall be a Party;—to Controversies between two or more States;—between a State and Citizens of another State;—between Citizens of different States;—between Citizens of the same State claiming Lands under Grants of different States, and between a State, or the Citizens thereof, and foreign States, Citizens or Subjects.

**CONSTITUTION OF THE UNITED STATES,
AMENDMENT XI.**

The judicial power of the United States shall not be construed to extend to any suit in law or equity, commenced or prosecuted against one of the United

States by Citizens of another State, or by Citizens or Subjects of any Foreign State.

CONSTITUTION OF ALABAMA, 1901,
ARTICLE 1, SECTION 14.

That the State of Alabama shall never be made a defendant in any court of law or equity.

C.

ARGUMENT.

The Petition for a Writ of Certiorari should be denied.

The decision of the Court of Appeals followed applicable decisions of this Court. The Court of Appeals applied the fundamental principle precisely stated by this Court in *Duhne v. State of New Jersey*, 1920, 251 U.S. 311, 313, 64 L. ed 280, 281, 40 S. Ct. 154:

... it has been long since settled that the whole sum of the judicial power granted by the Constitution to the United States does not embrace the authority to entertain a suit brought by a citizen against his own state without its consent. (Citing numerous cases.)

A suit by a citizen against his own state "cannot be entertained upon the ground that the controversy arises under the Constitution or laws of the United States." *Missouri v. Fiske*, 1933, 290 U.S. 18, 26, 78 L. ed 145, 149, 54 S. Ct. 18.

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United States v. California, 1936, 297 U.S. 175, 80 L. ed 567, 56 S. Ct. 421 and *California v. Taylor*, 1957, 353 U.S. 553, 1 L. ed 2d 1034, 77 S. Ct. 1037, cited by petitioners, are inapposite. The question of the jurisdiction of a federal court to entertain a suit by a citizen against his own state was not involved in either case; the United States brought the action in *United States v. California*, *supra*; in *California v. Taylor*, *supra*, California waived its immunity by intervening as a party defendant.

No conflict exists between the decision below and *Petty v. Tennessee-Missouri Bridge Commission*, 1959, 359 U.S. 275, 3 L. ed 2d 804, 79 S. Ct. 785, where this Court with three dissents held that an act of Congress approving an interstate compact which specifically provided that the Commission had the power "to sue and be sued in its own name" authorized a suit against the Bridge Commission by a citizen.

The argument that the State of Alabama waived its immunity from suit ignores *Ford Motor Company v. Department of Treasury of the State of Indiana*, 1945, 323 U.S. 459, 89 L. ed 389, 65 S. Ct. 347 and the precise language of Article 1, Section 14 of the Constitution of Alabama 1901:

That the State of Alabama shall never be made a defendant in any court of law or equity.

CONCLUSION.

The Court of Appeals applied established uniform precedents of this Court in concluding that the State of

Alabama is immune from suit by a citizen of the State of Alabama; no conflict, real or apparent, exists between the decision below and any case decided by this Court.

The Petition for Certiorari should be denied.

Respectfully submitted,

RICHMOND M. FLOWERS,
As Attorney General of the State
of Alabama,

WILLIS C. DARBY, JR.,
Attorney for Respondents.

CERTIFICATE AS TO SERVICE.

I, Willis C. Darby, Jr., hereby certify that I have mailed a copy of the foregoing Brief in Opposition to Petition for Writ of Certiorari, properly addressed to Honorable Al G. Rives and Honorable Timothy M. Conway, Jr., counsel of record for Petitioners, by depositing the same in a United States Post Office or mail box, with first class postage prepaid.

This the _____ day of July, 1963.

WILLIS C. DARBY, JR.,
Attorney for Respondents.